

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Lynn R. and Roma Buehler, et al.,

Complainants,

vs.

Burlington Northern & Santa Fe Railway
Company,

Defendant.

Case 01-01-016
(Filed January 8, 2001)**ORDER EXTENDING STATUTORY DEADLINE**

We extend the deadline for resolving this adjudicatory proceeding, because we cannot meet the 12-month deadline. Pub. Util. Code § 1701.2(d) provides that adjudicatory cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline. The 12-month deadline for resolving this matter is January 8, 2002.

Background

This case concerns Defendant's closure of a railroad crossing after an accident at the crossing. Complainants seek injunctive relief, maintaining that the crossing must be reopened to accommodate emergency vehicles.

On February 27, 2001, the Assigned Commissioner and Assigned Administrative Law Judge (ALJ) granted Complainants' request for a temporary

restraining order and required Defendant to remove all barricades, gates, fences and padlocks it erected across the Summit Truck Trail crossing. That ruling remains in effect. Hearings were held on March 21, 2001 and April 25, 2001. On May 23, 2001, the ALJ partially granted Defendant's motion to dismiss Complainants' first and third causes of action, because the Commission lacks jurisdiction to address certain issues. This proceeding was submitted on July 30, 2001, after the filing of reply briefs, but was reopened August 23, 2001, upon issuance of a ruling requesting additional briefing. Those briefs were submitted on September 14, 2001.

Discussion

Because of the nearness of the approaching deadline, and the fact that the case has not yet concluded, this order is issued to provide the findings required by § 1701.2(d). This case cannot be concluded within 12 months of initiation. We anticipate the presiding officer's decision (POD) will mail no later than 30 days after the statutory deadline. Although the POD is expected to issue shortly, even issuance of the POD before the statutory deadline would not necessarily "resolve" the matter, because parties have 30 days thereafter to appeal; similarly, a Commissioner has 30 days to request a review of the POD by the full Commission. Additional time is necessary to permit the Commission to render its final decision.

Accordingly, we find that the 12-month deadline for processing this case pursuant to Pub. Util. Code § 1701.2(d) cannot be met, and that an extension in the schedule will be required to allow for adequate time to review potential appeals or requests for review. An extension through April 30, 2002, should provide a reasonable allowance of time to conclude the proceeding.

Under Rule 77.7(f)(4) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment of draft decisions extending the deadline for resolving adjudicatory proceedings. Accordingly, pursuant to Rule 77.7(f)(4), the otherwise applicable statutory deadline for public review and comments is being waived.

Findings of Fact

1. This proceeding was initiated on January 8, 2001.
2. The proceeding was submitted on July 30, 2001 and reopened for additional briefing on August 23, 2001, with that briefing concluded on September 14, 2001.
3. Based upon the 12-month statutory deadline, this proceeding must be resolved on or before January 8, 2002, unless this date is extended.
4. The current schedule allows insufficient time to resolve this proceeding before the 12-month statutory deadline runs.
5. An extension through April 30, 2002, is necessary to allow the Commission adequate time to consider the presiding officer's decision.
6. Public review and comment regarding today's decision should be waived.

Conclusions of Law

1. Pub. Util. Code § 1701.2(d) requires that adjudication cases be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline.
2. The findings set forth above are sufficient to justify why the 12-month deadline cannot be met.
3. The 12-month statutory deadline imposed by Pub. Util. Code § 1701.2(d) should be extended, effective immediately.

O R D E R

IT IS ORDERED that the 12-month statutory deadline in this proceeding is extended until April 30, 2002.

This order is effective today.

Dated _____, at San Francisco, California.